



LEGISLATIVE GUARDIANSHIP OVER THE CONTRACT (COMPARATIVE STUDY)

PROF. DR .ABDULMAHDI KADHIM NASER ¹, HAIDER SALAH GATEA ²

^{1,2}College of Law , University of Al-Qadisiyah , Iraq
abdulmahdi.naser@qu.edu.iq ¹ , Haider.Gatea@qu.edu.iq ²

INTRODUCTION

According to Thomas Hobbs, "What people call a contract is the interdependence of rights." Would he assume that the two parties' contract would be voided based on this area? But do they grant anyone the authority to repeal the legislation broadly speaking? This introduction must be separated into the following paragraphs in order to examine this concept:

First: The essence of the research idea: No longer acceptable after finishing reading this humble research say That "pacta sunt servanda" was not recognized by this principle. Of the serious challenges manifested in the lawmaker's overreach on this principle, and on various occasions. One of these abuses is the idea of avoiding the contract from others. The other person here means the person who has not entered into the contractual association, It's nothing to do with the contract, whether it's non-foreign, relatively non-contractor or non-contractor. This notes that the legislator makes the unilateral hand of law an explicit legal provision to which he may be entitled- A natural person who was a public or private moral mother.

refusal to be bound by the agreement to which he was not a party. When given permission, the lawmaker is driven by moral principles. How it functions to supply the required amount The individual's initiative prevails above the required level of societal cohesion. Hence, the law prioritizes some issues over others in an effort to maintain societal harmony. This is the termination of the contract as a result of third parties' attempts to meddle against the will of its limbs. They didn't want to give him the option of terminating their agreement with him and picking them; what amounts to the contract's legal guardianship results in its termination. The law deems it likely if there is a conflict with an interest.

Second: The importance of research: The importance of research stems from the state of legal and judicial controversy that authorized the lawmaker's intervention in the contract to the extent that it uprooted the contract from his life Removing it from existence through the system of dissolution, At a time when the law's role is not undermined in the elaboration of the legal framework for the Decade In a way that leaves him no doubt about trimming the contract from the flaw he might experience. It even makes it seismic in how subordinate it is to public order and morals. So that importance comes from the necessity of articulating opinion. Reinforced by the applications that support it for the Legislative Guardianship Calendar On the contract and how well she can get things back into perspective.

Third: The problem of research: These problems revolve around a particular central point: The law when it regulated the general framework of the Decade from its conclusion to its It was driven by a universally agreed objective of seizing and repairing the terms, conditions and obligations of the parties to the contract demise And the stability of financial transactions, Is it acceptable then that the law aims to dismantle it, dissolve it Instead of solving his crisis if he sees what affects his stability, The law then threatens its stability and conveys the crisis to it.

Fourth: Questions of study: Attempts to seek answers to the central question: Are the special laws that have enabled others to terminate the contract to which they were not a party, Is it a serious



danger to the Civil Code, which has defined the general theory of contract law? In other words, did the amended provisions of the Civil Code contradict the principles of the Contract Code? This question differs from the following sub-questions:

1. Is the pacta sunt servanda rule now subject to legal control?
2. Is the equivocation of dissolution from others a confirmation of the decade crisis that has been talked about frequently in French jurisprudence?
3. Is dissolution of non-tyranny legal on the contract system?
4. Does dissolution constitute an infringement of the principle of binding force of the contract Or is he stating his last breath before the rule of law?

Fifth: Research methodology: this research has adopted the method of comparative analytical study, We will scrutinize the legal provisions of the French, Egyptian, Iraqi and Jordanian Civil Code. Provisions in other special laws and attempting to assess them and to identify, agree and weigh among them. We will also compare with what is contained in Islamic jurisprudence in this regard, specifically Hanafi jurisprudence, The owners, El Shafei, Al-Hanbali and Al-Amami for the purpose of enriching and maintaining research.

SIXTH : Scope of research: The objective scope of the study is determined by the civil law of the States referred to above Some special laws, some of which can be asserted as permitting the imposition of guardianship on contracts. Control over its dissolution without the owners' will. The personal scope we will look at the concept of others in the dissolution, That other person who doesn't care if he's a natural person or a public moral person. He was a private mother or presumptive when the law granted him legal power. (Provision) is legal to permit the avoidance of a contract to which he was not a party.

Seventh: Research structure: We divided this study into researchers, We discussed in the first the concept of legislative guardianship of the contract, and in the second its applications.

First search

Concept of legislative guardianship of the contract

We are not exaggerating when we say that the rule of law cannot be overpowered by contractual will. As a result, I imposed administrative, health, and global economic transformations, as well as legislative and judicial intervention in the contractual process. To the extent that it is possible to say that the contract has evolved into a legal relationship, regardless of these interventions and their scopes, what we are referring to is forced dissolution. The agreement serves as a form of legal guardianship for the agreement. Despite the fact that we were unable to locate a legal definition of forced avoidance of contracts, it is clear that there are two different types of avoidance: judicial and contractual. And if they get dragged behind.

But the compulsory dissolution of the contract is seen as an expression of the rule of law, through jus cogens; or the termination of the contract, In hypotheses where an agreement between the contractors on avoidance cannot be spoken of, No breach of the contract's obligations justifies recourse to the judiciary to claim avoidance of the contract, Not even an impossibility in the execution of contract terms raises a litigation over the determination of its existence if not to rule on the contract's dysfunction; Certainly, as long as the contract is avoided otherwise here, the issue of forced avoidance of the contract can be raised.

This name has been chosen as what is known in the Anafi jurisprudence as they have the name "optional dissolution" stemming from the combination of the contract with the option. Seen: Shafiq Ayub, The option of the condition in Islamic jurisprudence: Hanafi doctrine, without edition, League of

Arab States, Institute of World Arab Studies, Egypt, 1961, p. 69. Ahmed Al-Hasri, State's financial and social policy in comparative Islamic jurisprudence, Unprinted, Azhar Colleges Library, Egypt, 1994, p. 238.

Trusteeship in language means sovereignty. any State's sovereignty over others. Consider: Grid Sheikh Mohammed, lexicon in language, grammar and drainage scientific, philosophical, legal and modern expressions and terminology, 5, No edition, Yazudi Scientific House, Jordan, 2021, p. 730. That is the meaning that we want any rule of law over the contract.

This illustrates the difference between forced avoidance of a contract that is not linked to a breach or impossibility IN THE IMPLEMENTATION OF THE CONTRACT AND BETWEEN DISSOLUTION CONSIDERED the impossibility of fulfilling the obligations arising from the contract. In particular, as the law is forced to dissolve, it is compelled to contract; And the two things can come together on one occasion, Notwithstanding that the principle of the sovereignty of will is respected in law, and the judiciary together. However, the creditors of that dissolution cannot be obliterated.

Second research

Applications of legislative guardianship of the contract

The law plays different roles in its termination of the contract, In which his role is direct and in which he is not, but by granting the judge legal competence Make it capable of avoiding the contract at its discretion. In order to identify these roles, we will divide this paragraph into two points, We devote the first to demonstrating the explicit role of the law by avoiding contracts in order to compel its contractors, and the second to demonstrate the law's concessional role in the avoidance of the contract

First requirement

The explicit role of the law by forcing the avoidance of contracts on its contractors

The aim of the forced avoidance of the contract may be double, The law avoids a contract and compels one party to engage another person in force. To illustrate the merits of this topic, we will review it in the following terms

Noting article 1103 (French civilian), article 147 (Egyptian civilian), Article 146 is an Iraqi civilian and article 241 is a Jordanian civilian. Respect for this principle has been reflected in numerous judicial decisions, including Egyptian civil cassation, Appeal No. (2959) of 87 S dated 21/11/2021 Referred to on the official website of the Egyptian Court of Cassation. Civil cassation, Appeal No. 3640 of 86 BC dated 4/11/2021 referred to on the official website of the Egyptian Court of Cassation. Contractual compulsion can be defined as: "compelling individuals to contract and compel them by law, for considerations which the legislator considers to have been taken care of by the private interest ". Considered: Ala Daoud Salum, Legal Regulation of Contractual Gibraltar (Comparative Study), Master's Thesis, University of Tikrit/Faculty of Law, 2021, p. 11. This definition is critical of our judgement; The law, when the other person was granted the power to terminate contracts. Contracts in which he is not a party that are not intended to oblige others to replace the contract that has been terminated He could have chosen him for his own good. Contractual compulsions can be defined as: "Legal mechanism authorized by others for the valid contract

1_ - Dispossession for public benefit: while the property is owned is leased, Both the lessor and the lessee continue to fulfil their contract obligations If the decision on judicial ownership prevents the continuation of the contract and the termination of the lease ends, and the conclusion of a new contract with the blessing of the judiciary, If we know that the adaptation of possession is a contract



on ownership. " In Islamic jurisprudence, the audience of jurists went In Islamic jurisprudence, the audience of jurists went The mosque may be expanded at the expense of privately owned land. while retaining the owners' right to claim fair compensation and when the mosque is distressed worshippers can no longer accommodate them. So if the land adjacent to the university was a lease, that would have led to its dissolution, Although the parties to the contract, whether the lessee or the lessor, are without prejudice What they must according to the contract, but the annulment here occurred by virtue of the law.

avoiding the contract and replacing itself with the other contractor, albeit with compulsion on the part of the parties to the contract ". This does not mean forced contracting, which defects consent and makes the contract suspended. The Law on Property Issues in France, the most important of which was promulgated on 18 July 1985 Egypt's Expropriation for Public Benefit and Improvement Act No. 13 of 1962, In Iraq, Ownership Act No. 12 of 1981 Amended and published in the Iraqi Fact Sheet in number (2817) in the 16/2/1981. Jordan's Property Act No. 12 of 1987 was regulated. For example, article 7 of Bahrain's Public Utility Property Act No. 39 of 2009 stipulates that: However, the transfer of ownership of the property owned to the consumer is from the date of publication of the ownership decision Publication of the ownership decision has implications for the registration of the title contract. Asaad Diab, Research in Identification, Editing and Real Estate Registry, No Edition, Modern Library, Lebanon, 1985, p. 228. Mohammed Amin bin Omar bin Abdulaziz Abidin Al-Damascus Al-Hanafi, Al-Mahtar responded to Al-Dar Al-Mukhtar, J4, 2, Dar Al-Thakr, Beirut, 1992, p. 379. For the owners, Mohammed bin Ahmed bin Arfa al-Dsouki al-Maliki, Footnote on Big Explanation, V1, No Print, House of Thought, Beirut, pp. 588. For Al-Shafiyah, it is considered: Suleiman bin Omar bin Mansour Al-Azhili Al-Azhari, By explaining the student curriculum known as the Camel Footnote, Without print, House of Thought, without place and time of publication, p.263. And Hanbal has the son of Qaddama, the singer, Republic of Korea ", former source, p. 30. There is no comparable view of this view. Considered: Nasser Makarim al-Shirazi, new fatwas, Imam Ali Panem is a student (peace be upon him), Qom, 1385 AH, 57.

Al-Shafah: Al-Shafah is defined by legislation in the comparable Arab laws, They are: "The right to own or some of the property sold, even in reparation. on the buyer with its usual price and expenses ". Here the question arises: How can the slab be a way Who methods of avoiding the contract from the non-circle of its parties?

It is not conceivable that the shipment is the avoidance of the sales contract between the seller and the buyer Because under article 1142 of the Iraqi Civil Code The Iraqi seller replaces the buyer's rights and obligations. seller ", the sales contract shifts from being between the seller and the buyer to being between the seller and the seller.

Although a trend in jurisprudence and Islam considers that the contract between the seller and the seller is a new contract in which there is no place to talk about solutions.

Article 945 of the Egyptian Civil Code and article 1138 of the Iraqi Civil Code are also established. That whoever wants to take the radiation should declare their desire to do so to both seller and buyer or the Land Registration Department under the conditions set forth in the above articles, However, under article 938 of the Egyptian Civil Code and article 1144 of the Iraqi Civil Code, Article 1167 of the Jordanian Civil Code "does not apply to the siblings".



To be considered: Article (935) Egyptian civilian, Article (1150) Jordanian civilian and Alta Know Shafa, This is proven by the Egyptian and Jordanian law of the joint partner, Being able to take the share sold, article 936 is considered by an Egyptian civilian; 1151 Jordanian civilians, article 1128 Iraqi civilians It touched on the definition of the faction, proving to the partner in the common residence Provided that he does not own a house or apartment independently Provided that he does not own a house or apartment independently No. 211 of 14 February 1978, published in Iraqi Fact Sheet No. 2639 of 20 February 1978. French law recognized the right to hereditary restitution, a type of siphon. For more on this right, see: D. Suleiman Yusuf Al-Sheehan, Al-Shafah's projectiles in Islamic jurisprudence and Jordanian civil law, without print, Dar al-Gulf, Jordan There has been considerable controversy over the adaptation of the lever, and a trend in Iraqi jurisprudence is seen as a personal claim to solutions. against the buyer, not a licence or a right. Considered: d. Hassan Ali Thanoun, Original in-kind rights, no print, ASEAN Printing Co., Ltd., Baghdad, 1954, p. 153. Elsewhere he says she's right. The author himself is considered: Lectures in Iraqi Civil Law (property, rights in kind and real estate credit), Institute of Higher Arab Studies, Egypt, 1955, p. 26. But Iraq's judiciary has seen it as a potential or a right of preponderance. To be considered: Judgement of the Court of Cassation No. (157) of 17/9/1969 (unpublished). dr. Abdelmonim Faraj al-Sadda, Original in-Kind Rights, Title, No Print, Mustafa Al Babi Al Halabi & Children's Company and Press, Egypt, 1960, pp. 486 ff.

Any disposal of ownership or any in kind right arranged on the accompanying property if he has been notified in the introduction of radiation ", We conclude from this and the concept of the offence if he does so despite being informed, the conduct shall be reversed (dissolved). by the patron saint. In Islamic jurisprudence, We find that scholars may permit until the avoidance of the contracts entered into by the buyer by the patron saint; It is not.

Not only did they do so much, but we saw them enabled and empowered the buyer to lock up the sale of the saint until he meets his price. "

3. Guardianship of the bankrupt bank: The reorganization of the bankrupt bank subject to guardianship may be required To cancel all contracts to which the latter was bound prior to the declaration of trusteeship; On this basis, the Bank was granted the power to terminate all such contracts at its own will, wholly or in part. In accordance with the bank's interest, the contract shall be incomplete. It must be either in the process of implementation or initiated.

Suleiman Khalif Al-Qalib, Al-Shafah in Jordanian Civil Law (comparative study), Master's thesis, University of Jordan/Faculty of Postgraduate Studies, 1993, p. 116. Father Mohammed al-Hussein bin Masood bin Mohammed bin al-Fur al- Polishing in the jurisprudence of the Shafi 'i front, Adil Ahmed Abdelmoukhouh and Ali Mohamed Mu 'awad, Part IV, without Scientific Books House, Beirut, Without a Year of Publication, p. 365. Also: Ibn Qaddama, the singer, cared for by Mohamed Abdul Qader Atta, Part IV, without print, Scientific Books House, Beirut, without a year of publication, p.337. Muhammad Zakaria bin Muhammad bin Yahya Al-Kandhil Summarize the route to Malik's tenure, achieving Yamin Saleh Sha'ban J12, No Edition, Beirut Science Books House, 2010,p 79. Abu Bakr Muhammad bin Ahmad bin Abi Sahl Al-Sarkhsi Al-Hanafi, Book of Simplified Jurisprudence in Hanafi Abi Abdullah Mohamed Hassan Mohamed Hassan Ismail El Sh Part 23, No Edition, Science Books House, Beirut, No Publishing Year, p. 147.

Mohammed bin Al-Hassan Al-Toussi, lined up in front jurisprudence, without print, The Associated Library for the Revival of Ja 'afari Monuments, Without a Place of Publication, 1967, p. 111.

Article 62 of the Iraqi Banks Act No. 94 of 2009

Bankruptcy: "It is a system that applies only to traders if they cease to pay their debts." Considered: d. Alaa Abd al-Amir Musa al-N Legal system for the operation of bankrupt trader's funds (comparative study), Master's thesis, University of Babylon/Faculty of Law, No Year, 19.

When reference is made to the original English text, we find it using the word "Termination". which means "dissolution". Considered: Encyclopedia of Jordanian Legislation, Al-Bashir Publishing and Distribution House, Jordan, 1998, para. (80/1).

However, it has not yet been completed and within 60 days of the date of his inauguration. It should also be noted that this guardian exercises his functions Under the Agency's contract with the Central Bank of IraqThe trusteeship bank has no role in this process, And of course here the avoidance is beyond the limitations of the parties to the contract. There is no dispute in Islamic jurisprudence as to the original element of compulsion in the sale of the bankrupt debtor's assets, The tap went on to arrange what the judge should do or sell. In terms of beginner and finisher, they made the property the last thing to be sold. The owner agreed with them. and El Shafia. and " and the front. Because the sale cannot reply to one thing twice and to two different people; In our view, the jurisprudence above does not preclude the avoidance of the contracts entered into by the bankrupt to sell them forcibly.

(19) d. alaan Baha 'uddin Abdullah Al-Madrasser, Legal Aspects of Trusteeship of Private Banks, Zain Al-Haqiyah Publications, Beirut, 2016, p.266. A trend has also emerged in jurisprudence that he sees as a representative of the creditor community rather than of the bankrupt client Considered: Abd al-Awl Abidin Mohamed Bassiouni, Effects of bankruptcy on creditors' fulfilment of their rights from bankruptcy: Comparative Study in Islamic Jurisprudence and Positive Law No Edition, Dar Al-Thakr University, Egypt, 2008, P.100 The Egyptian judiciary also held that the Secretary of the bankruptcy was considered to be a third party in the provisions of the For mock contracts issued from the bankrupt. Consequently, it was dissolved by him Appeal No. 326 (34th year) shall be heard at the 11/6/1968 meeting. No Print, Dar Mahmoud, Egypt, 2017, p. 31 onwards We believe for the community of creditors whose decisions apply even to the minority not satisfied; Here if this group decides to terminate the contracts with the bankrupt, This also leads to the avoidance of contracts with the bankrupt and the minority concerned. Consideration: The same provision for the bankruptcy peace contract applies to the minority Who didn't like that fix. Considered: Mohamed Dagman, Compulsory Contract (Comparative Study), Zayn Rights Publications, 2018, p. 163.

(20) We have not found a legal adjustment to the bank's relationship with the Central Bank However, we believe that it has general jurisdiction over banks in accordance with its role as defined in Article (4/1/ط). The Central Bank Act No. 56 of 2004 stipulates that: "1. In order to achieve the objectives set out in article 3 Moreover, it is mentioned in this Act. The functions of the Central Bank of Iraq include: Issuing, organizing and supervising banks' licenses and permits as provided for in this Act and in the Banking Act ".

(21) d. Alan Baha 'uddin Abdullah Al-Madrasser, former source, p. 82

(22) Abdullah bin Mahmoud bin Mudood Al-Moussalli Al-Baldahi Majd Al-Din Abu Selection for the Chosen Explanation, J2, No Print, Halabi Press, Egypt, 1937, 98.

(23) Abu Alwaleed Mohammed bin Ahmad bin Rushd Al-Kartabi, Statement, Collection, Explanation and Guidance on Extracted Issues dr. Mohammed Hajji, J10, T2, Dar al-Ouest al-Islami, Beirut, 1988, p. 381.

(24) Abu Isaac Ibrahim bin Ali bin Yusuf al-Shirazi, polite in Imam el-Shafei's juris No edition, J2, Science Books House, Beirut, no publishing year, p. 116.

Because the sale cannot reply to one thing twice and to two different people; In our view, the jurisprudence above does not preclude the avoidance of the contracts entered into by the bankrupt to sell them forcibly.

Second requirement

The law's premature role in the compulsory dissolution of the Decade

The legislator regulated contracts with explicit rules; Contractor's obligation To ensure that it is upheld for the sake of justice and its hoped benefit; Otherwise, the embargo is confronted; As follows:

1. **The benefits of the contract:** if the desired benefit of the contract is unlawful; This other person can demand a halt to exposure. Had a dispute been raised and brought to justice to determine the merits of the order. While the parties to the contract continue to fulfil their obligations They may face the issue of avoidance from outside the contracting service. For example, rape may lead to the avoidance of the lease on the trapped and concluded Between landlord and non-tenant If he's a perpetrator of terrorism, In the judiciary's view, the incidence of the mystique is not realized due to the absence of the state of the mystique.

We criticize what the Court went to in its judgment, because the winner is between the serum and the encroachment It's the intention of owning, if that's not what you own, you don't count. Infringement of infringement provisions(28)

(25) Kaddama's son, singer, source mentioned above, J4, p. 334.

(26) The Dar al-Marekraf Foundation, the doctrinal lexicon of Sheikh al", available at www.ar.lib.eshia.irg2, p. 92.

(27) "When the exploitation of the property for necessary security reasons is necessitated by the circumstances of the stage that the country is experiencing as a result of security instability caused by terrorist operations In order to drain the sources of terrorism, the conditions for the fulfilment of the occurrence of the serum It is the intention of seizure by the handlers with the intention of aggression Consequently, there is no existential or non-existent state of the epitome's remuneration. Federal Court of Cassation judgement (1965/Appellate Body Drug/2021) dated 6/6/2021 ". Available on the official website of the Supreme Judicial Council www.hjc.iq Seen on 9/12/2022. It should also be noted that the Court of Cassation in its decision above Having amended its Opinion in Decision No. 1676/Criminal and Civil Immunity/2008 On 18/5/2008, which read: "Putting a hand on a property Plaintiff by the defendant's military units and his usurpation of property without grounds of law not covered by criminal and civil immunity ". Published on the same site above.

such as a claim for lifting an overrun or a claim for similar remuneration We appreciate that the text of article 755 of the Iraqi Civil Code Failure to accommodate this situation, as the entity subordinate to the above judgement The lessor and lessor are deemed to be official and unable to take their hands off the property; In other words, the solutions provided by that article are not able to cover this situation. which must be treated as forced avoidance of the contract.

The Jordanian Civil Code cautioned him that If the competent authorities issue a prohibition against the full utilization of the wage without the lessee's reason rent breaks down and fare drops from the time of prevention " Which calls into question that it is not possible to describe the State protected by the law and protect its institutions Its institutions are governed by laws that are "non-" On the contract; The decision of the Iraqi Federal Court of Cassation must not be concealed. which considered the Executive to be a third party and immunized its actions from veto even if it causes harm to others and whatever such harm. " On the most distinctive attitudes of Islamic jurisprudence in this regard; Hanbali jurisprudence, which has not been prevented from benefiting the sale during the exception period of the non-contractual It is used for a certain period, and when the benefit is not realized; He has the option of avoiding the contract. The masses of Muslim scholars went to the permissibility of selling monopoly money in order to compel it If he refuses to sell it to the general public; This is through contractual compulsion.

(28) My father Al-Hassan Ali bin Abdussalam Al-Tsuli, joy in explaining the masterp Investigation: Mohamed Abdelkader Shaheen, J2, Without a Print, Dar Al-Kader Al-Scholar, Beirut, 2017, p. 571. (29) Judgement No. 1501/Override/2008 of the Federal Court of Cassation of Iraq in the 15/7/2008. Available on the Council's official website: www.hjc.iq, seen on 13/12/2022. (30) Article 755 of the Iraqi Civil Code states: "1. If the wage is angry and the tenant is unable to lift the usurper's hand, He may request avoidance of contract or loss of fare. 2. If he fails to raise the wrist's hand, and this is possible for him, The lessor did not foreshadow the occurrence of the serum. The wage shall not be forfeited and may sue the aggressor for compensation. " It is offset by article 575 of the Code. It is unpaid in French civil legalization. (31) Article 698 of the Jordanian Civil Code is considered. Judgement No. 210/Compensation/2007 of the Court of Cassation in 28/5/2007. Available on the official website of the Supreme Judicial Council: www.hjc.iq, seen on 14/12/2022.

- 2. The fairness of the contract:** (35) may be grounds for granting to others the power to terminate the contract contractual justice between contractors; Especially if we know that contractual justice derives from the general rules of law as the principle of good faith As if the contractor had dispersed in terms of knowledge experience in the subject matter of the contract One demanded that the object be assessed by a designated expert; This requirement is due to the cognitive disparity between contractors In order to achieve the desired justice, the expert was given the possibility of dissolution.

The necessity to offer avoidance power to the unpersuaded, on the other hand, must not be made convincing by justice; the underlying goal is illegal since "justice has no good opposed to the apparent meaning of the law." One of the most notable characteristics of Islamic law in this regard is Hanabal's assertion that justice was an integral feature of the Islamic Shari'a. According to Hanabal, a third party cannot invalidate one ruling at the expense of another. Justice is synonymous with justice; it means to lean away from any of the two. It is a trait and a will of God.

Al-Bahouti, Al-Masa 'ah, Mansour bin Younis bin Salahuddin bin Hassan bin Adris Al-Bahouti Al-Hanbali Mask Scout for Persuasion Board, J3, No Edition, Science Books House, Beirut, No publishing year, J3, p. 191. The owner also agrees with them: Market custom, market footnote on big explanation, J4, previous source, p. 13. Zainuddin ibn Ibrahim ibn Muhammad Ibn Najim al-Masri, The Fine Sea explained the treasure of minutes (in the branches of Hanafi Investigation: Sheikh Zakaria Amirat, no print, Science Books House, Beirut, 2013, pp. 229 . Abi Abdullah Mohammed bin Abd al-Rahman to Morocco al-Ra 'aini, talents of Galilee in explaining Khalil'sAlumni: Sheikh Zakaria Amirat, No Edition, Dar Al-Kadbar Al-Science, Beirut, 2007 p 228. Suleiman bin Omar bin Mansour Al-Ajili Al-Azhari, By explaining the student curriculum known as the Camel Footnote, Without print, house of thought, without place and time of publication, 93. Bahouti, Mask Scout, Previous source, p. 188. Mohammed Amin bin Omar bin Abdulaziz Abidin Al-Damascus Al-Hanafi, Al-Mahtar responded to Al-Dar Al-Mukhtar, 6, 2, Dar Al-Thakr, Beirut, 1992, p. 399. "Justice is that polar star of every legal formation," says Dr. Hassan Ali Al-Thaanun. Considered: d. Hassan Ali al-Thanoun, Philosophy of Law, Al-Ani Press, Baghdad, 1975, p. 163. Dr. Abdul Mahdi Kazim Nasser, Civil liability arising from free transport (comparative study), Master's thesis, University of Babylon/Faculty of Law, 2002, p. 139. In this regard, a trend in jurisprudence finds that the occurrence of fraud from a non-contractor Lead to the avoidance of the contract between the contractor and the administration, even in good faith because implementation was not envisaged to be then in good faith. Considered: Zainab Sabri Mohammed, dissolution of administrative contracts arising from tenders (comparative study), Master's thesis, Qadisiyah University/Faculty of Law, 2016, p. 186.

3_ Taking into account contractual intent: because civil justice is required rather than automatic; The judge must not deviate from what was requested by the parties to the proceedings in their application; If they request a non-dissolution, he has no right to decide the dissolution as in the contract review. which granted the judge the right to terminate the contract without being requested by the contractor. " In Islamic jurisprudence, we find a clear difference between the scholars in the extent to which the intent in the contract affects, In the Shafi'i doctrine, there is no intention because it is absent and the beds do not know other than the Almighty. They, like the tap, and their successors, are sacred to the motive behind the act, They were represented by ropes and are regarded by the front as the "greatest pillar of the decades". We support the trend of disregard for prejudice and risks in the legal sphere, At least, because the law doesn't count with intentions unless you make a concrete appearance, that is, unless it exists in conjunction with implementation and action. " Whether this intention is general or contract-specific, it is the same between them.

Mohammed bin Abi Bakr bin Ayub bin Sa'ad Shams Al-Din Ibn Al -qaem aljawzia Informing the signatories about the Lord of the Two Worlds, J3, T1, Dar Al-Bookshop, Beirut, 1991, p. 11. Ali bin Mohammed bin Ahmed Abu al-Qassim al-Rahabi, known as Son of Al-Sam Judges' kindergarten and survival route, J1, T2, DR. Salahuddin Al-Nahi, Al-Raha Foundation, Beirut, 1984, p. 204. Nargis Saleh Sahib Al-Moussawi, Principle of Justice in Front Jurisprudence, Master's thesis, Karbala University/Faculty of Islamic Sciences, 2019, p. 13. dr. Ajayad Thammer Nayef Al-Dalimi, the legal basis for the annulment of the civil suit, Arab Center for Publishing and Distribution, Egypt, 2018, p. 113. Abbas Kassem Mahdi al-Daguqi, Jurisprudence, National Centre for Legal Issuances, Egypt, 2015 p469. This is contrary to the Iraqi judiciary's determination of the Tribunal's commitment to the limits of the applicant's applications without exceeding them. Considered: Judgement of the Federal Court of Cassation of Iraq No. 11622/Personal Status Authority and Personal Materials/2022 On 24/8/2022 available at www.hjc.iq. Abu Abdallah Mohamed bin Idris El Shafei, mother, Abu Bakr Al-Razi Al-Jawqif, Abu Dhabi Al-Tahawi ' Correction: d. Sa'id Bakdash, 1, Dar al-Sarraj and Dar al-Bashir al-Islamiya, Mecca, 2010, p. 391. Ibn Rushd grandchild, the beginning of the industrious and the end of the frugal, No edition, Dar al-Hadith, Cairo, 2004, p. 160. Thereafter, the time limits are in place. Taqi al-Din Ibn Taymiyah, Fatwa al-Kabir, J6, investigation: Mohamed Abdul Qadir Atta Mustafa Abdelkader Atta, Without a Print, Dar Al-Bookshop, Beirut, 2010, p. 262. Mohamed Thai Al-Hakim, General Rules of Comparative Jurisprudence, Without a Print, The World Complex for Convergence of Islamic Doctrines, Tehran, 1429 AH, p.259.

FINAL

Having completed our study labeled "Legislative Guardianship of the Contract (**Comparative Study**)", In the paragraphs below, we are attempting to demonstrate the most important of the recommendations, as follows:

First: Results: They can be restricted in the following terms:

- 1_ We have concluded that the legislature is involved in scaling down the principle of the sovereignty of will Although he considered it to be a text.
- 2_ We have concluded that the legislator has granted the legal text to others for the contract was justified by the avoidance of the contract to which he was not a party.
- 3_ We have concluded that the law may sometimes compel contracting This compulsion may be a means of compulsory avoidance of the contract from its parties. As in possession of the general benefit. This

does not mean that compulsion is the same as coercion that defects the contract and makes it a suspended contract.

4_We found that the applications of dissolution are from others Not limited to the legal provision authorizing it to dissolve The avoidance may take place at the will of the parties to the contract through others.

5_ We have not found a legislative or legal definition of compulsory avoidance of the contract, so we define it as: " Legal mechanism whereby others have the option of avoiding the contract to which it was not a party in accordance with the provisions of the legislature ". It is different from the dissolution that leads to the obligation becoming impossible for some reason, It approaches him by making the obligation impossible and giving others the option of dissolving at the same time, The latter has the right to annul without going through the will of the parties to the contract.

Second: Proposals: We propose that the beneficiaries of the study:

1. We saw the fluctuation of the judiciary in the matter of the usurpation When State institutions are considered to be usurped and when they are not, We therefore propose that the following text be added to the Civil Code to read as follows:

dr. Sobhi Mahamasani, philosophy of legislation in Islam, without print, Al-Kashif Library and Press, Beirut, 1946, p. 257. as well as

David Deroussin, *Le contrat à travers le code civil des français*, association française pour l'Histoire de la justice, n 19, 2009, p. 249.

2. If the wage is solicited from a public legal person for purposes of public interest The parties to the contract were unable to lift the usurper's hand and the contract was avoided by law The parties to the contract retain their right to claim compensation for material and moral damages and in the assessment of material damage the Court shall take into account the fare of the example ".

3_In order not to marginalize the role played by the Civil Code in the process of regulating contracts by law; We propose to amend the text of article 146/1 thereof. This includes the equation of dissolution from others in the civil domain The scope of the text is special and read as follows:

1. If the contract is performed, it is necessary and no contractor may revert to it. It shall be amended only by virtue of a provision of this Law or of other private law or by consent. "

2_Until your receipt results in the avoidance of the contract from others Any avoidance of the contract between two parties by the recipient"Others" must add text to the Iraqi Property Law and be worded as follows:

The transfer of ownership of the property owned to the consumer shall be from the date of publication of the ownership decision The publication of the ownership decision shall have the effect of registering the title contract. "

Sources

First: dictionary

1 - Shafiq Ayyub, the choice of the condition in Islamic jurisprudence: Hanafi doctrine, No Edition, League of Arab States, Institute of World Arab Studies, Egypt, 1961.

2- Mohammed bin al-Hassan al-Toussi, lined up in front jurisprudence, without print, Bound Library for the Revival of Ja 'afari Monuments, No Place of Publication, 1967.

3- Ahmad al-Hasri, the State's financial and social policy in comparative Islamic jurisprudence; Unprinted, Azhar Colleges Library, Egypt, 1994.

4- Saliman bin Omar bin Mansour Al-Ajili Al-Azhari, known as Al-jamel By explaining the student curriculum known as the Camel Footnote, No print, no thought house, no place and no time to publish.

5- Nasser Makarim al-Shirazi, the new fatwas, Imam Ali Ben Abiy's school is a student of peace.



- 6- dr. Suleiman Yusuf al-Sheehan, the projectiles of al-Shafba 'in Islamic jurisprudence No edition, Dar Al-Gulf, Jordan, 2017.
- 7-Father of Muhammad al-Hussein bin Masood bin Mohammed bin Fur al-Baghoui, refinement in Imam el-Shafei's jurisprud Adil Ahmed Abdelmouk and Ali Mohamed Muad Part IV, no print, Science Books House, Beirut, no publishing year.
- 8-Mufaddin bin Qaddama al-Qudsi, singer on Khartoum's shortcut, He was cared for by Mohamed Abdelkader Atta, Part IV, Dar al-Bookshop, Beirut, 2008
- 9-Muhammad Zakaria bin Muhammad bin Yahya Al-Kandh Summarize the path to your owner's tenure, Yamin Saleh Shaaban, J12, Unprinted, Beirut Science Books House, 2010.
- 10-Abi Bakr Muhammad bin Ahmad bin Abi Sahl al-Sarkhsi al-Hanafi, Book of simplified jurisprudence in Hanafi, Abi Abdullah Mohamed Hassan Mohamed Hassan Ismail El Shafee. Part 23, no edition, Science Books House, Beirut, 2017.
- 11-bn Rushd the grandson, the beginning of the industrious and the end of the economist, J3, without print, Dar al-Hadith, Cairo, 2004,
- 12- Abu Isaac Ibrahim bin Ali bin Youssef Al-Shirazi, polite in Imam El-Shafee, No edition, J2, Science Books House, Beirut, no publishing year.
- 13- Abu Alwaleed Mohammed bin Ahmed bin Rushd Al-Kartabi, Statement, Collection, Explanation and Guidance on Extracted Issues, dr. Mohammed Hajji, J10, T2, Dar al-Ouest al-Islami, Beirut, 1988.
- 14- Abu Bakr Al-Razi Al-Jawqif, Abu Dhabi Correction: d. Sa 'id Bakdash, 1, Dar al-Sarraj and Dar al-Bashir al-Islamiya, Mecca, 2010.
- 15- Abu Abdallah Muhammad bin Adris El Shafei, Mother, J3, T2, Dar al-Thakr, Beirut, 1983.
- 16-Father Alhassan Ali bin Abdussalam Al-Tasuli, delight in explaining the masterpiece, Investigation: Mohamed Abdelkader Shaheen, J2, without print, Dar Al-Kader Al-Scholar, Beirut, 2017.
- 17- Abi Abdullah Mohammed bin Abd al-Rahman for Morocco al-Ra 'aini, talents of Galilee in explanation of Khlil Graduation: Sheikh Zakaria Amirat, unprinted, Dar al-Kadhbar al-Science, Beirut, 2007.
- 18-- Taqi al-Din Ibn Taymiyah, Fatawi al-Kabir, J6, investigation: Mohamed Abdelkader Atta; Mustafa Abdelkader Atta, Without a Print, Dar Al-Bookshop, Beirut, 2010.
- 19-dr. Sobhi Mahamasani, philosophy of legislation in Islam, without print, Kashif Library and Printing, Beirut, 1946.
- 20- Suleiman bin Omar bin Mansour Al-Ajili Al-Azhari, known By explaining the student curriculum known as the Camel Footnote, No print, Dar al-Thawr, Damascus, no publishing year.
- 21-Abdullah bin Mahmoud bin Mudood Al-Moussalli Al-Baladhi Majd Al-Din Abu Fadel alhanafi. Selection for the Chosen Explanation, J2, No Print, Halabi Press, Egypt, 1937.
- 22-Ali bin Mohammed bin Ahmed Abu al-Qassim al-Rahabi, almaarof as the son of al-samnani , Judges' kindergarten and survival route, , DR. Salahuddin Al-Nahi, Al-Raha Foundation, Beirut, 1984.
- 23-- Mohammed Amin bin Omar bin Abdulaziz Abidin Al-Damascus Al-Hanafi, Al-Muhtar's response to Al-Dar Al-mukhtar house thought Beirut 1992.
- 24-Mohammed bin Abi Bakr bin Ayub bin Sa 'ad Shams al-Din Ibn alqaem aljawzia Information about the Lord of the Two Worlds, J3, T1, Science Books House, Beirut, 1991.
- 25-Mohammed bin Mohammed bin Abd al-Rahman bin Hussein, known as Al-Maliki Freedom of speech in matters of commitment, investigation: Mr. Yusuf Ahmed, Unprinted, Science Books House, Beirut, 2010.
- 26-Mohammed Thai al-Hakim, General Rules in Comparative Jurisprudence, Without a Print, World Convergence Complex of Islamic Doctrines, Tehran, 1429 AH.
- 27-Mansour bin Younis bin Salah al-Din bin Hassan bin Adris al-Bahouti al - hasnbali Mask Scout for Persuasion Board, J3, No Print, Science Books House, Beirut, No Publishing Year.

28-Mohammed bin Ahmad bin Arafa Al-Dsouki Al-Maliki, footnote to Al-Dsouqi on the No print, House of Thought, Beirut.

Third: Legal Books:

1. dr. Ajyad Thammer Nayef Al-Dalimi, The legal basis for the annulment of the civil action, Arab Center for Publishing and Distribution, Egypt, 2018.
2. dr. Asad Diab, Research in Identification, Editing and Real Estate Registry, No Edition, Modern Library, Lebanon, 1985.
3. dr. Hassan Ali al-Thanoun, Philosophy of Law, Al-Ani Press, Baghdad, 1975.
4. dr. Hassan Ali Al-Thanoun, Lectures in Iraqi Civil (Property, Rights in Kind and Real Estate Credit), Institute of Higher Arab Studies, Egypt, 1955.
5. d. Hassan Ali Thanoun, Original in-kind rights, no print, ASEAN Printing Co., Ltd., Baghdad, 1954.
6. dr. Abdelmonim Faraj al-Sadda, Original in-Kind Rights, Title, No Print, Mustafa Al Babi Al Halabi & Children's Company and Press, Egypt, 1960, pp. 486 ff.
7. dr. Baha 'uddin Abdullah Al-Madrasser, Legal Aspects of Trusteeship of Private Banks, Zain Al-Haqqiyah Publications, Beirut, 2016.
8. Abbas Kassem Mahdi Al-Daguqi, Jurisprudence, National Center for Legal Publications, Egypt, 2015.
9. Abdul Ul Abidin Mohamed Bassiouni, effects of bankruptcy on creditors' fulfilment of their rights from bankruptcy: Comparative Study in Islamic Jurisprudence and Positive Law, No Edition, University Think Tank, Egypt, 2008.
10. Mohammed Dagman, Compulsory Contract (Comparative Study), T1, Zain Al-Haqqiyah Publications, Beirut, 2018.
11. Mohamed Azmi al-Bakri, Al-Saouriyah in the light of jurisprudence and the judiciary, without print, Dar Mahmoud, Egypt, 2017

Fourth: Philosophical books: Thomas Hobbs, Lviathan, translation: Diana Habib Warfare, Hard News, Audit: d. Radwan Al-Sayed, T1, Abu Dhabi Authority for Culture and Heritage (Kalma), United Arab Emirates, 2011.

Fifth: University Theses:

- A_ Ala Dawood Slum, Legal Organization of the Geopolitical Contract (Comparative Study), Master's Thesis, University of Tikrit/Faculty of Law, 2021.
- B_ Zainab Sabri Mohammed, Dissolution of Administrative Contracts arising from Tenders (Comparative Study), Master's Thesis, Qadisiyah University/Faculty of Law, 2016.
- C_ Dr. Abdul Mahdi Kazim Nasser, Civil Liability Arising from Free Transport (Comparative Study), Master's thesis, University of Babylon/Faculty of Law, 2002
- D_ Suleiman Khalif al-Qalib, al-Shafah in Jordanian Civil Law (comparative study), Master's thesis, University of Jordan/Faculty of Postgraduate Studies, 1993
- E_ Alaa Abdul Amir Musa Al-Na 'lei, Legal System for the Operation of Bankrupt Merchant Funds (Comparative Study), Master's thesis, University of Babylon/Faculty of Law, without year of publication.
- F_ Nargis Saleh Sahib Al Mousavi, Principle of Justice in Front Jurisprudence, Master's Thesis, Karbala University/Faculty of Islamic Sciences, 2019

Sixth: Laws:

1. Iraq's laws:

- A_ Civil Code No. 40 of 1951, as amended.
- B. Iraqi Banks Act No. 94 of 2009.



- C. Real Estate Registration Act No. 43 of 1971, amended.
- D. Central Bank Act No. 56 of 2004.
- E. Property Act No. 12 of 1981, as amended.

2-Arab Laws:

- A. Egypt's Civil Code No. 131 of 1948, as amended.
- B. Jordanian Civil Code No. 43 of 1976.
- C. Egyptian Expropriation for Public Benefit and Improvement Act No. 13 of 1962.
- D. Jordanian Property Act No. 12 of 1987.
- E. Bahrain's Property Ownership Act No. 39 of 2009.
- F. Encyclopedia of Jordanian Legislation, Dar al-Bashir Publishing and Distribution, Jordan, 1998.

3-Foreign Laws:

- A. French civil legalization for the year 1804 amended for 2016.
- B. French Property Act of 18 July 1985

Seventh: Resolutions of the Revolutionary Command Council (dissolved):

- 1-Revolutionary Command Council (Dissolved) Decision No. (211) of 14/2/1978.

Eighth: Judicial rulings:

- 1-Judgement No. 1501/Override/2008 of the Federal Court of Cassation of Iraq in 15/7/2008.
- 2-Judgement No. 210/Compensation/2007 of the Federal Court of Cassation of Iraq in 28/5/2007.
- 3-Judgement of the Federal Court of Cassation of Iraq No. 11622/Personal Status and Personal Materials Authority/2022 of 24/8/2022.
- 4-Judgement No. 157 of the Federal Court of Cassation of Iraq in 17/9/1969 (unpublished).
- 5-Civil, Egyptian, cassation of appeal No. 3640 of 86 BC dated 4/11/2021.
- 6-Egyptian Civil Cassation, Appeal No. (2959) of 87 BC dated 21/11/2021.

IX: Websites:

- 1 - The site of the abolished Egyptian Court of Cassation.
- 2-www.hjc.iq .

X. Sources in French:

- 1- David Deroussin, *Le contrat à travers le code civil des français*, association française pour l'Histoire de la justice, n 19, 2009.
- 2- Bruno Dondero, *La réforme de la réforme du droit des contrats*, MISE A JOUR du 12 oct. 2017: à la fin de l'article.